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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |  |  |
|---|-------------|----------------------|---------------------|------------------|--|--|
| 10/807,402  | 03/24/2004  | Walter Howard        | 1410/77072          | 3856             |  |  |
| 48940   | 7590        | 04/06/2009           | EXAMINER            |                  |  |  |
| FITCH EVEN TABIN & FLANNERY<br>120 SOUTH LASALLE STREET<br>SUITE 1600<br>CHICAGO, IL 60603-3406 |             |                      |                     | BECKER, DREW E   |  |  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |  |  |
| 1794  |             |                      |                     |                  |  |  |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/807,402             | HOWARD ET AL.       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Drew E. Becker         | 1794                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 January 2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,4,5,7-14,19-21 and 23-31 is/are pending in the application.  
 4a) Of the above claim(s) 28 and 29 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,4,5,7-14,19-21, 23-27, 30-31 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 28-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/18/07.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. The term "high gluten flour" in claims 8 and 24 is a relative term which renders the claims indefinite. The term "high gluten flour" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is not clear what amount of gluten would be considered "high".

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1794

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 4, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnston [Pat. No. 3,541,946].

Johnston teaches a method for making filled dough products by providing an extrusion head with an outer horn having an outer horn passageway with an inlet and outlet wherein the passageway tapers inwardly along its length from an initial width to a final smaller width (Figure 3, #41), an inner horn located co-axially within the outer horn and defining an inner passageway of constant diameter within a portion of the outer horn (Figure 3, #48) beginning at an inner horn inlet located where the passageway (#48) begins and an inner horn outlet where the passageway (#48) ends, the inner horn outlet being located within the outer horn passageway (Figures 4-5), conducting dough through the outer horn passageway and conducting an edible filling through the inner horn passageway to create an extruded rope (Figure 4, #68), and an L/D ratio of less than 5.0 (Figure 3).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1794

7. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston as applied above, in view of Tracy et al [Pat. No. 5,686,128].  
Johnston teaches the above mentioned concepts. Johnston does not recite an L/D ratio of 3-4 or a horizontal orientation. Tracy et al teach a method for coextruding food products by providing a horizontal extrusion head with a tapering outer horn and a coaxial inner horn (Figure 10, #90; Figure 4, #30), conducting dough between the two horns (column 11, lines 10-23), conducting an edible filling through the inner horn (column 10, line 58 to column 11, line 10), the outer horn having a length of about 1.25" (column 9, line 56), the horn producing a co-extrudate rope with a diameter of less than about 0.5" (column 10, line 53), the extrusion head inherently producing less dough shearing than larger lengths, the outer horn tapering inwardly (Figure 11, #94), the inner horn having a substantially constant cross-section (Figure 4, #30), the L/D ratio being 2.5 or greater (column 9, line 56; column 10, line 53), and the filling including cheese and fruit material (column 10, line 58 to column 11, line 10). It would have been obvious to one of ordinary skill in the art to incorporate the features of Tracy et al into the invention of Johnston since both are directed to methods of coextruding dough, since Johnston already taught varying the dimensions of the extrusion head (column 4, lines 35-75), since extrusion heads were commonly made to these dimensions as shown by Tracy et al (column 9, line 56; column 10, line 53), since Johnston already included a horizontal extrusion screw (Figure 1a, #20), since coextruded ropes were commonly extruded on a horizontal plane as shown by Tracy et al, and since Tracy et al teach that

Art Unit: 1794

an extruder incorporating these features creates food products with highly uniform and integral layers (abstract).

1. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston as applied above, in view of Baras [US 2002/0122858A1].  
Johnston teaches the above mentioned concepts. Johnston does not recite the filling being cream cheese. Baras teaches a method for making filled bagel products by coextruding a bagel dough and cream-cheese filling (Figure 1, #15), cutting the rope into segments (paragraph 0014), connecting the ends of the segments to create rings (paragraph 0014), proofing (paragraph 0015), boiling (paragraph 0002), and cooking via steam (paragraph 0016). It would have been obvious to one of ordinary skill in the art to incorporate the cream cheese filling of Baras into the invention of Johnston since both are directed to methods of making filled dough products, since Johnston simply does not describe what types of filling were to be used, since Baras simply did not describe the extrusion means in detail, and since the combination of Baras and Johnston would have provided a fast and convenient means for producing cream-cheese filled bagels.

2. Claims 11-13, 19, 23, 25-27, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston, in view of Baras, as applied above, and further in view of Svengren [Pat. No. 4,659,580]

Johnston and Baras teach the above mentioned concepts. Johnston also teaches a dough transport mechanism (Figure 1a, #20), a filling feeding mechanism (Figure 1a, #45), and cutting the extruded rope (Figure 4, #69). Johnston does not recite the use of bagel dough, proofing, cooking via steam and boiling, the tapered outer horn providing

reduced dough shear, a dough supply container, a filling supply container, connecting extruded ropes end to end to form ring-shaped foods. Regarding the reduced dough shear, it would have been obvious to one of ordinary skill in the art that the extrusion head of Johnston would naturally provide reduced shear due to its use of a tapered outer horn which provided a gradual contraction in size as compared to an abrupt and immediate constriction. Baras teaches a method for making filled bagel products by coextruding a bagel dough and cream-cheese filling (Figure 1, #15), cutting the rope into segments (paragraph 0014), connecting the ends of the segments to create rings (paragraph 0014), proofing (paragraph 0015), boiling (paragraph 0002), and cooking via steam (paragraph 0016). It would have been obvious to one of ordinary skill in the art to incorporate the bagel processing of Baras into the invention of Johnston since both are directed to methods of making filled dough products, since Johnston simply did not describe what types of dough and filling were to be used, since Baras simply did not describe the extrusion means in detail, and since the combination of Baras and Johnston would have provided a fast and convenient means for producing cream-cheese filled bagels. Svengren teaches a method for horizontal coextrusion with containers for the dough and filling (Figure 1, #24, 26, 28) as well as feeding mechanism for the materials (Figure 1, #25, 27, 29). It would have been obvious to one of ordinary skill in the art to incorporate the containers and feed mechanisms of Svengren into the invention of Johnston, in view of Baras, since all are directed to methods of coextrusion, since Johnston simply did not illustrate how the materials were fed to the extruder, and since the containers and feed mechanisms of Svengren

Art Unit: 1794

provided a reliable and accurate means for feeding these materials to the extruder of Johnston.

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston as applied above, in view of Burger [Pat. No. 6,001,400].

Johnston teaches the above mentioned concepts. Johnson does not recite the dough having at least 11% protein. Burger teaches a method for making filled bagel products wherein high gluten flour with 13.5-14% protein is used (column 7, line 40). It would have been obvious to one of ordinary skill in the art to incorporate the protein levels of Burger into the invention of Johnston since both are directed to methods of making filled dough products, since Johnston simply did not describe the types of dough used, since bagels were commonly filled as shown by Burger, and since bagels conventionally required high protein flour for their production.

4. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston, view of Baras and Svengren, as applied above, in view of Burger [Pat. No. 6,001,400].

Johnston, Svengren, and Baras teach the above mentioned concepts. Johnston, Svengren, and Baras do not recite the high gluten flour having at least 11% protein. Burger teaches a method for making filled bagel products wherein high gluten flour with 13.5-14% protein is used (column 7, line 40). It would have been obvious to one of ordinary skill in the art to incorporate the protein levels of Burger into the invention of Johnston, in view of Svengren and Baras, since all are directed to methods of making filled dough products, since Johnston simply did not describe the types of dough used,

Art Unit: 1794

since bagels were commonly filled as shown by Burger, and since bagels conventionally required high protein flour for their production.

5. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston, in view of Baras and Svengren, as applied above, and further in view of Campbell [Pat. No. 4,332,538].

Johnston, Svengren, and Baras teach the above mentioned concepts. Johnston, Svengren, and Baras do not recite a twin screw conveyor. Campbell teaches a method for making dough products by transferring the ingredients via twin screw conveyor (Figure 1, #12). It would have been obvious to one of ordinary skill in the art to incorporate the twin screw conveyor of Campbell into the invention of Johnston, in view of Baras and Svengren, since all are directed to methods of extruding dough, since Johnston already included a screw (Figure 1a, #21), and since the twin screw conveyor of Campbell provided efficient and timely feeding of dough materials.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston, in view of Baras and Svengren, as applied above, and further in view of Roth [Pat. No. 2,246,758].

Johnston, Svengren, and Baras teach the above mentioned concepts. Johnston, Svengren, and Baras do not recite a vacuum for the dough hopper. Roth teaches a dough extrusion system comprising a hopper subjected to vacuum conditions in order to intermittently supply dough to the extruder (page 1, column 1, lines 36-55). It would have been obvious to one ordinary skill in the art to incorporate the vacuum of Roth into the invention of Johnston, in view of Svengren and Baras, since all are directed to

Art Unit: 1794

methods for extruding dough, since Johnston simply did not describe how the dough was supplied to the extruder, and since Roth teaches that this was an effective means for supplying dough to an extruder (page 1, column 1, lines 36-55).\\

8. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston, in view of Baras and Svengren, as applied above, in view of Tracy et al [Pat. No. 5,686,128].

Johnston, Baras, and Svengren teach the above mentioned concepts. Johnston, Baras, and Svengren do not recite an L/D ratio of 3-4. Tracy et al teach a method for coextruding food products by providing a horizontal extrusion head with a tapering outer horn and a coaxial inner horn (Figure 10, #90; Figure 4, #30), conducting dough between the two horns (column 11, lines 10-23), conducting an edible filling through the inner horn (column 10, line 58 to column 11, line 10), the outer horn having a length of about 1.25" (column 9, line 56), the horn producing a co-extrudate rope with a diameter of less than about 0.5" (column 10, line 53), the extrusion head inherently producing less dough shearing than larger lengths, the outer horn tapering inwardly (Figure 11, #94), the inner horn having a substantially constant cross-section (Figure 4, #30), the L/D ratio being 2.5 or greater (column 9, line 56; column 10, line 53), and the filling including cheese and fruit material (column 10, line 58 to column 11, line 10). It would have been obvious to one of ordinary skill in the art to incorporate the features of Tracy et al into the invention of Johnston, in view of Baras and Svengren, since all are directed to methods of coextruding dough, since Johnston already taught varying the dimensions of the extrusion head (column 4, lines 35-75), since extrusion heads were

commonly made to these dimensions as shown by Tracy et al (column 9, line 56; column 10, line 53), and since Tracy et al teach that an extruder incorporating these features creates food products with highly uniform and integral layers (abstract).

### ***Response to Arguments***

9. Applicant's arguments filed 1/14/09 have been fully considered but they are not persuasive.

Applicant argues that Johnston does not teach "the outer horn passageway tapers inwardly in cross sectional shape along the entire first axial length". However, Johnston clearly teaches an outer horn having an outer horn passageway with an inlet and outlet wherein the passageway tapers inwardly along its length from an initial width to a final smaller width (Figure 3, #41).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a constant taper of the outer horn) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a reduced opacity and occurrence of sheared dough) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from

the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/  
Primary Examiner, Art Unit 1794